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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1970

No. 1385

In the Matter of: TMT TRAILER FERRY, INC., et al.,
THOMAS J. KIRKLAND, as Trustee for
TMT TRAILER FERRY, INC., et al.,

Petitioner,

v.

PROTECTIVE COMMITTEE FOR INDEPENDENT
STOCKHOLDERS OF TMT TRAILER FERRY, INC., et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF OF THE PROTECTIVE COMMITTEE FOR INDEPENDENT STOCKHOLDERS OF TMT TRAILER FERRY, INC. et al. IN OPPOSITION

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This brief is on behalf of respondent Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc., ("committee") and of Malcolm S. Mason, Irma S. Mason and Irwin L. Langbein, individual respondents ("committee counsel") in opposition to the petition for writ of certiorari to the United States Court of Appeals for the Fifth Circuit.

In the court of appeals the committee was appellant in appeal # 29560, the committee and its counsel appellants in appeal # 29089; the appeals were consolidated and the decision below was rendered in the consolidated appeal.

QUESTIONS PRESENTED

I. Whether a stockholders committee and its counsel in a Chapter X reorganization may be protected by the Court of Appeals against wilfull hazing by the trustee's attorney which the district court declined to correct.

The Court of Appeals granted protection against such harassment.

II. Whether interim compensation to counsel for a stockholders committee for services in a Chapter X reorganization may be determined by the Court of Appeals in its own independent judgment where that court found the district court had made a grossly inadequate award, and the services, chiefly opposition to three successive reorganization plans (described in *Protective Committee v. Anderson*, 390 U.S. 414, esp. at 418-423), are on the record and largely within the direct knowledge of that court.

The Court of Appeals held that it could determine appropriate compensation and made an award.

III. Whether the power of the Court of Appeals to consider the issue of protection from harassment is barred by the filing date on a notice of appeal 35 days after entry of the order denying protection

a) where appellant holds the district court's deputy clerk's timely receipt and asserts that the notice of appeal was timely in fact, and

b) where relief from harassment was sought by petition for leave to appeal (originally denied) and also by notice of appeal, the Court of Appeals having later reconsidered its denial of leave to appeal and having consolidated, on trustee's request, the appeal from the harassment with the allowed timely permissive appeal already before the court on the related issue, in the same district court order, of inadequate compensation, and

c) where the Federal Rules of Appellate Procedure extend the filing period for notice of appeal to 60 days, a

government agency, here the SEC, being a party and active participant, and

d) where the alleged jurisdictional defect, first raised here, was never presented to the court of appeals during the ~~14~~ 15 months from notice of appeal to the petition for certiorari.

The question of jurisdiction does not in any event affect the fee award to committee counsel which, pursuant to statute (11 U.S.C. § 650, § 250 of the Bankruptcy Act), was appealed under allowance by the court of appeals of timely petition for leave to appeal.

Neither the foregoing restatement of questions nor any other questions asserted by the petition are remotely worth the attention of this Court.

RESTATEMENT

Petitioner's statement of the case reflects inaccuracies and omissions. We have accordingly restated the principal facts.

Background

In a Chapter X reorganization initiated in 1957, the stockholders committee had been authorized by a small number of stockholders to represent them in the district court or any other courts and in the negotiation and development of plans but not in voting (Pet. App. A. 47). No other person has undertaken to represent the interests of independent stockholders (Pet. App. A. 85, A. 159). The committee was designated by the district court to represent stockholders (Pet. App. A. 88).

Citation conventions: Pet. App. A.___, Appendix to Petition; Ct. Ap. App. ___, Appendix (3 vols.) printed for use of the court of appeals, part of the record below, requested by respondents to be certified and transmitted to this Court. References to documents filed in the Court of Appeals are designated by title and date; district court filings are designated OR with Docket number.

The committee opposed three erroneously confirmed plans of reorganization which improperly excluded stockholders. The third plan, sustained by the court of appeals, was set aside on writ of certiorari successfully sought by the committee (*Protective Committee v. Anderson*, 390 U.S. 414, rehearing denied 391 U.S. 909).

Proceedings in the District Court

Upon remand, the committee faced protracted and difficult further proceedings (*Protective Committee v. Anderson, supra*, at 441, 453), to be supported without financial assistance unless fees to the committee and its counsel were awarded by the court.[1]

The committee and its counsel accordingly sought expense reimbursement and interim fees on account for services through the remand (Ct. Ap. App. 129).[2] After vigorous contest by the trustee and major creditors (Ct. Ap. App. 146, 147, 152, 157, 197, 199, 204, 206, 211) and an evidentiary hearing (Ct. Ap. App. 793) the district court held that under the "exceptional circumstances" interim fees should be awarded and would be fixed in amount without any further hearing after receipt of a recommendation requested from the Securities and Exchange Commission (SEC) (Ct. Ap. App. 840-841).

The SEC recommended $60,000 on account of fees plus $10,000 on account of disbursements (Ct. Ap. App. 263) on committee counsel's request for $100,000 on account

[1]The effective prohibition against private financing of either committee or counsel was stated in our Motion to Dispense with Printing, in this Court, Case #952, October Term 1966, June 6, 1967, par. 6; see also cases collected in 30 SEC Annual Report (1965) 100, 31 SEC Annual Report (1966) 98; Application of Counsel for Reimbursement of Disbursements and for Interim Fees (Ct. Ap. App. 129).

[2]Contrary to the statement, Petition p. 8 ftn 5, that the "petition in its entirety is set forth at A. 90 to A. 155," the application itself is not included in Petitioner's Appendix. The document at A. 90-155 is a supporting Statement of Time and Disbursement.

of fees plus roughly $18,000 reimbursement for what was then eleven years of service (Ct. Ap. App. 139). District court action on the application for fees was delayed: entry of award was postponed by ex parte order (Ct. Ap. App. 764) as a result of erroneous charges against committee and counsel by the new attorney for the new trustee, alleging conflict of interest, exceeding authority and improper designation of one of committee counsel (Ct. Ap. 331-2). Refutation of these charges by citation to the eleven-year record (Ct. Ap. App. 352-366) was followed by a course of harassment: further false charges, legally invalid objections to compensation for pre-remand services, denial of compensability of post-remand services and threats of opposition to compensation for future services (Ct. Ap. App. 369-396), scheduling depositions requiring attendance in Miami of committee and counsel resident in California, New York and Washington, D.C. (Ct. Ap. App. 367-8) concerning matters already of record (Ct. Ap. App. 431-462) characterized by the SEC as "diversionary procedures and contentions" (Ct. Ap. App. 463, 471).

The committee was forced to move in the district court for protective order against the harassment and the depositions and for instructions as to the future role of the committee (Ct. Ap. App. 397). Nine months after the fee hearing, the district court awarded $10,000 fees and $5,000 disbursements coupled with *in terrorem* conditions (Pet. App. A. 8-9); in the same order, the committee's motions for instructions and protection were denied (Pet. App. A. 13).

The order of the district court was filed October 9, 1969. Time to appeal expired, if the 30-day rule applies, at the earliest on November 10, 1969, November 8 being a Saturday (Rules 4(a), 6(a), 26(a), Federal Rules of Appellate Procedure). On November 8 committee counsel in Florida put in the mail, return receipt requested, both a petition for leave to appeal addressed to the court of appeals and a notice of appeal addressed to the district court.

Post office records recited that both clerks physically received the documents on November 10 and receipted for them (Pet. App. 51, OR 1391). Both clerks stamped them as of later dates: November 11 in the Court of Appeals, November 13 in the district court.

Proceedings in the Court of Appeals

By petition for leave to appeal review was sought of both parts of the district court order—the fee award and the denial of protection/instruction—on the ground that both were integral parts of the same central issue: whether a stockholders committee may be driven out of a protracted reorganization by inadequate compensation and deliberate harassment (Pet. App. A. 3, 8-11; see A. 64-65). The petition for leave to appeal expressly referred to the concurrent notice of appeal from the denial of protection/instruction as precautionary (Pet. App. A. 3 ¶4).

Trustee's answer to the petition for leave to appeal challenged the jurisdiction in the court of appeals for out-of-time filing (Pet. App. A. 19). Upon submission of signed receipt dated November 10, attached to Motion for Correction of Docket Entry dated November 19, 1969, the record was corrected by the court of appeals to show timely filing (Pet. App. A. 51). The court of appeals granted leave to appeal the fee award and denied leave to appeal the protection/instruction issue which was then perfected as an appeal of right initiated by notice of appeal.

Trustee's attorney made six unsuccessful attempts to abort[3] the proceedings before reaching the merits. Trus-

[3] 1. Trustee's Answer to petition for leave to appeal, Nov. 14, 1969, alleging no jurisdiction for late filing (Pet. App. A. 19), and

2. Motion to Dismiss the appeal, Jan. 23, 1970, for alieged late filing of Committee brief, and

3. Objection to Committee and SEC designation of record, requesting dismissal of appeal, Feb. 6, 1970, and

4. Response, requesting dismissal of appeal for lack of second cost bond, Feb. 6, 1970 (on items 2, 3 and 4, see Pet. App. A. 55), and

tee's attorney never put in issue lack of jurisdiction for out-of-time filing of the notice of appeal—in fact he acknowledged that it had been filed simultaneously with the petition for leave to appeal (Trustee's Response dated February 6, 1960, to Committee's Opposition dated January 30, 1970, to Trustee's Motion to Dismiss Appeal dated January 23, 1970, for alleged late filing of brief) and his motion to dismiss the appeal of right was grounded on alleged want of prosecution (item 6, ftn. 3 cont'd below).

Respondent committee therefore took no steps to correct the record in that instance at that time.[4]

Trustee's attorney also obtained permission to file a brief in the extraordinary length of 91 pages (Pet. App. A. 60) and for oral argument (see Pet. App. A. 59) rather than the summary determination (under § 250 of the Bankruptcy Act) and memorandum brief originally ordered by the Court (Letter from Clerk dated December 12, 1969, accompanying grant of petition for leave to appeal).

In a per curiam decision dated October 27, 1970, the same panel of the court of appeals that had dealt with all the above recited motions reconsidered both its earl-

[footnote continued]

5. Motion to dismiss the appeal, alleging failure to comply with Court Order of Feb. 19, 1970, March 9, 1970 (see Pet. App. A. 58), and

6. Motion to dismiss appeal (#29560) under Local Rule 9(b), Feb. 25, 1970 (see Pet. App. A. 56).

[4]Since the issue is now raised by the petition, the committee moved to correct the record, attaching certificate executed by the deputy clerk whose signature is on the return receipt. Notwithstanding testimony of the deputy clerk, the Post Office employee in charge of records and of counsel's secretary, the district court decided against the committee, notification received as this brief goes to press. Counsel believe the order erroneous (a parallel contention by trustee of late filing in the court of appeals having been decided by that court in favor of the committee (Pet. App. A. 51), *supra*, p. 6) and are considering further corrective action. As shown below, this factual issue has not even marginal importance since the decision of the court of appeals is in any event correct on other grounds.

ier denial of the trustee's motion to consolidate the two appeals (one of right and one permissive) and its earlier denial of the committee's petition for permission to appeal the portions of the district court order relating to protection and instruction (Opinion below, A. 65).

On the merits, the court of appeals ruled:

1. As to fees: "The District Court was in error and much too low in its award of an interim fee to counsel for the Stockholders Protective Committee of $10,000 and expenses of $5,000 and the award is grossly inadequate." The court of appeals, reciting that it acted in the exercise of "our own independent judgment," adopted as "fair and reasonable" the SEC recommendation of $60,000 counsel fees and $10,000 reimbursment of expenses as partial allowances (Opinion below A. 66).

2. As to protection and instruction: "A protective order should have been issued by the District Judge to prevent undue harassment . . . The District Court was in error in denying the committee's motion for instruction defining the role of the committee." Further, the court ruled with respect to the *in terrorem* conditions of the fee award that "the interim award shall not be subject to vacation, setting aside, reduction or modification except upon proof of legal disqualification" (Opinion below A. 67, 68).

3. On a number of wild charges made by trustee and partially alluded to and relied on in the petition for certiorari[5] the court of appeals ruled as follows: "The several contentions and motions of the parties have been duly considered. They are disposed of either directly or by implication by what we have decided here" (Opinion below, A. 69).

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[5]One of these is the allegation (Petition p. 32) of "new and additional facts revealed subsequent to the hearing", a charge elaborately briefed below by trustee's attorney, e.g., Br. pp. 29-31, 72-78, and rejected by the Court of Appeals in the terms quoted in the text.

ARGUMENT

I. *No meritorious issue is presented as to the jurisdiction of the Court of Appeals* (Petition Question I, Committee Question III).

We have already pointed out in our restatement of the questions presented, *supra*, p. 2, that the issue of timeliness of the notice of appeal affects at most the issue raised concerning protection and instructions as to the future role of the committee. The fee award, appealed by allowance of a petition for leave to appeal timely filed, is not affected by this issue, but even as to protection/instruction, the court of appeals had proper jurisdiction:

A: Under Rule 4(a), Federal Rules of Appellate Procedure, the ordinary 30-day time for filing a notice of appeal is extended to sixty days if the government or a government agency is a party. Here the agency, the SEC, is not merely a nominal party, *United States v. American Society of Composers, A. & P.*, 331 F.2d 117, 119 (C.A. 2, 1964) cert. den. sub nom. *Shenandoah Valley Broadcasting, Inc., et al. v. American Society of Composers, A. & P.*, 377 U.S. 997, but actively participated as to the particular proceeding and the particular relief sought (protection against harassment).[6] On such facts the view of authoritative writers is that the sixty-day period applies in bankruptcy and reorganization cases, 9 *Moore, Federal Practice* (2d Ed. 1970) ¶ 204.10, esp. at p. 924-6; 2 *Collier on Bankruptcy* (14th ed. 1970) ¶ 25.02, p. 906. The committee, appellant below, filed notice of appeal and petition for leave to appeal early, in the interest of expedition, but clearly believed, reasonably and we submit correctly, that it had the protection of that period as expressly stated in its petition (Pet. App. A. 12).

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[6]SEC Memorandum on depositions, Ct. Ap. App. 563-471); Memorandum of the SEC, July 1970, Reply Memorandum of the SEC, September 1970, in Appeal # 29560, Court of Appeals; see Pet. App. A. 62.

B. We by no means concede that the notice of appeal was untimely, even if the 30-day period applied.[7] Had it not been timely there would still be no issue worth this Court's attention for the decision of the court of appeals is correct on other grounds.

C. Timely filing is no longer thought to be jurisdictional. 9 *Moore, Federal Practice*, ¶ 204.02[2] pp. 908-11. Even those cases that have called it jurisdictional do not call for formalistic rigorism. 9 *Moore, Federal Practice*, ¶ 203.09 pp. 728-30. If "some paper must be filed in at least one court or the other, to constitute a notice of appeal" *Federal Deposit Insurance Co. v. Congregation Poiley Tzedeck*, 159 F.2d163, 166 (C.A. 2, 1946), that was clearly done here. Even if the notice of appeal had not been timely, the much more informative petition for leave to appeal was specifically held timely by the court of appeals and suffices. 9 *Moore, Federal Practice*, ¶ 206.06 p. 1213. In fact, here the same issues were duly raised in the petition for leave to appeal and were properly reached in any event when the court of appeals, having previously rejected the permissive appeal on the protection/instruction issue and having denied trustee-appellee's motion for consolidation, reconsidered and granted the consolidation and stated that it "reconsidered" the denial of the permissive appeal as to protection/instruction.

D. Indeed, with the fee appeal properly before it, the court of appeals needed no notice of appeal at all to reach the closely related protection issue, to give, sua sponte, guidance to the district court. Petitioner makes no attempt to support his startling assertion (Petition p. 21) that the court of appeals, having once denied a permissive appeal, is "estopped" from reconsideration. He implies that the court of appeals is equally "estopped" from giving guidance th the district court. Clearly the court of appeals found it appropriate to give such guidance and it did so: it held the

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[7] See p. 7, ftn. 4, above.

depositions unnecessary in view of the award. The court also found the need for instruction clear: "The trustee through its counsel has taken the position throughout this appeal that the committee and its counsel are entitled to no compensation for their services"—and it proceeded to instruct trustee's attorney on the law and on the right of the committee "to participate fully" in the proceedings (Opinion below, A. 68). Even without having before it other aspects of the same order, the court of appeals for the Fourth Circuit found it appropriate to give guidance. Cf. *Carolina Mills v. Corry*, 206 F.2d 76, 77 (C.A. 4, 1953). A fortiori, the court of appeals here, dealing with the fee question and its implications for the ability of the committee to remain in the case, certainly had jurisdiction to give guidance on related issues.

* * * * *

Trustee's attorney became aware at least by February 1970 of the record filing date of November 13, of the notice of appeal.[8] He had then already raised and lost his parallel contention of untimeliness of filing of our permissive appeal; after that he raised several related invalid contentions of alleged lack of timeliness in our procedure (e.g., the partial list on p. ftn 3 above) but never raised the present jurisdictional contention in any of his many motions, briefs, petition for rehearing or petition for leave to file petition for rehearing.

This specious jurisdiction argument was thus hoarded to be shot off in this arena after all other ammunition had been spent in the court of appeals. It is transparently

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[8]Appellee's Response to Appellants' opposition to Motion to Dismiss Appeal, dated February 6, 1970, states on p. 2, par. 2: "that in conjunction with the Notice of Appeal . . . appellants did file a cost bond . . . on November 13, 1969"; Trustee's Motion to Dismiss Appeal under Local Rule 9(b) for want of prosecution, dated February 25, 1970, cited filing date of notice of appeal as November 13, 1969.

another phase of what we had complained of all along: a program to drive the committee and its counsel out of the reorganization by delay and attrition.

II. *No meritorious issue is presented as to the fee award by the court of appeals.* (Committee Question II)

The fee award clearly rests on its own peculiar facts. The district court fee award of $10,000 on account of 8000 hours of conscientious and competent service over eleven years "highlighted by the effective presentation in the Supreme Court of the United States" (Opinion below A. 67) is grossly inadequate as the court of appeals found. The court also found that "the circumstances here warrant the use of our own independent judgment in this [fee] controversy" (Opinion below A. 66); reviewing the services and the hearing thereon, it concluded that "in order to do substantial justice and to prevent undue hardship" it should adopt the SEC's recommendation as to amount which it considered "fair and reasonable" (Opinion below A. 67).

The modest interim fee of $60,000 awarded by the court of appeals raises no issue appropriate for review here. The courts of appeals, reviewing fees, frequently use their independent judgment. Petitioner inaccurately states that the Second and Third Circuits do not exercise like power (Petition p. 29, Petition Question V). When appropriate, they do, of course.[9] It was all the more appropriate for

[9]Matter of Hudson & Manhattan Railroad Co., 339 F.2d 144 (C.A. 2, 1964); In re General Economics Corp., 360 F.2d 762, 765(C.A. 2, 1966; Scribner & Miller v. Conway, 238 F.2d 905, 907 (C.A. 2, 1956); In the Matter of Nazareth Fair Grounds and Farmers Market, Inc., 374 F.2d 595 (C.A. 2, 1967); In re Solar Manufacturing Corp., 215 F.2d 555 (C.A. 3, 1954); In re Mountain States Power Co., 118 F.2d 405 (C.A. 3, 1941); see also Massachusetts Mutual Life Ins. Co. v. Brock, 405 F.2d 429, 435 (C.A. 5, 1968); In re Arlington Discount Co., 408 F.2d 490, 491 (C.A. 6,1969); In re Detroit International Bridge Co., 111 F.2d 235 (C.A. 6, 1940); Official Creditors Committee of Fox Markets Inc. v. Ely, 337 F.2d 461, 470-471 (C.A. 9, 1964).

the court of appeals to do so here because the district judge was new to the case and a large part of the services involved had been rendered in the court of appeals and their value was apparent from the records of that court.

The unsupported suggestion that committee counsel's services duplicated those of the Trustee, the SEC and the United States (Petition p. 30; Petition Question III) is contrary to uncontradicted testimony (Ct. Ap. App. 793-799, 815-16) and in any event immaterial as a matter of law, since it is well settled that a committee for a distinct class is not barred from compensation because other parties with other interests take some of the same positions (6A *Collier on Bankruptcy* §13.10 p. 968).

That the court of appeals abdicated its role in favor of the SEC (Petition p. 27; Petition Questions IV and V) is contrary to that court's express determination that it was exercising its "own independent judgment." It was clearly entitled however to give great weight to the views of the SEC, the only impartial participant throughout the proceedings (*Finn v. Childs Co.*, 181 F.2d 431 (C.A. 2, 1950); *In re General Economics Corp.*, 360 F.2d 762 (C.A. 2, 1966)).

Contrary to the innuendo of Petitioner's description of "usual procedure" (Petition p. 27, fn. 34), SEC counsel attended and cross-examined at the fee hearing (Ct. Ap. App. 630-635), and key SEC supervisory personnel who had participated throughout these proceedings are still participating.

The suggestion that the detail furnished by committee counsel in support of their interim fee application was inadequate (Petition p. 29; Petition Question V), is contradicted by the express ruling of the district court itself which held that a case had been made out and that fees could and would be awarded "without further hearing" (Ct. Ap. App. 840) and by the detailing stated in the court of appeals opinion (A. 67) as well as by the recommendation of the SEC (Ct. Ap. App. 263).

Petition Question VII is unintelligible. If it refers to the contention that a stockholders committee is without power to defend against confirmation of unfair plans of reorganization, with the consequence that it acts as a volunteer and is thereby precluded from compensation (Petition p. 33), this is not the Congressional intent of Chapter X in providing for representation of stockholders by a committee (§ 209) and for compensation to committees and their counsel (§ 242).

III. *No meritorious issue is presented by the protective provisions of the decision of the court of appeals.* (Committee Question I)

The premise of the court's opinion is the fact of harassment. The committee charged with SEC concurrence that trustee's attorney had engaged in deliberate harassment of the committee and its counsel (Pet. App. A. 10). The committee charged that the opposition to committee counsel's fees, the delays engendered by the multiplication of false charges, the threats, abuses and scheduling of depositions on matters already fully tried and easily ascertainable from the record itself[10] and by other methods less inconvenient to the committee were all part of a deliberate plan to drive the committee out of the case (Pet. App. A. 9-11); that this harassment was brought to the attention of the district judge and corrective action refused (Pet. App. A. 11); and that the award was not only inadequate but subject to *in terrorem* conditions (Pet. App. A. 8-9).

The court of appeals opinion makes clear that it found harassment to exist: referring to the SEC recommendations that the conditions to the fee award we had described as *in terrorem* should be stricken, the court held

> "Accordingly, in order to do substantial justice and to prevent undue hardship, we believe we should

[10] "The depositions would substantially duplicate what had already transpired in the contradictory proceeding before the District Judge himself." (Opinion below, A. 68)

> follow the SEC recommendation both as to amount and as to not being subject to vacation, etc., which we consider fair and reasonable and it is so ordered." (Opinion below A. 67)

As to depositions, the Court of Appeals held they were "unnecessary especially in view of the award we have made herewith" (Opinion below, A. 68) and declared:

> "A protective order should have been issued by the District Judge to prevent undue harassment."

In addition:

> "The District Court was in error in denying the Committee's motion for instructions defining the role of the Committee."

Very significantly, the Court of Appeals stated:

> "In the future the District Court should in the firmest and most emphatic manner possible, state to the Trustee and its counsel the absolute need of cooperation and harmony with the Protective Committee and its counsel to insure a proper determination and final wind-up of this reorganization." (Opinion below A. 68).

The suggestion (Petition pp. 21, 23; Petition Question VI) that these issues were not ripe for appeal, fully briefed below and raised again in the petition for rehearing en banc, amounts to saying that only after the committee is dead and long buried may it request protection. This is a reorganization badly off course. At an earlier stage we sought and obtained certiorari, and this Court reversed because the court of appeals had *failed* to give proper guidance to the district court, *Protective Committee v. Anderson,* 390 U.S. 414. Now, the court of appeals recognizing the need for guidance, has discharged that responsibility. There is no occasion for the intervention of this Court.

We close this brief in opposition with observation on some matters that do not warrant elaboration.

The Petition has only asserted but not demonstrated decisional conflict: it supplies some long strings of citations but leaves it to the Court to find the conflict. Similarly the Petition makes some bald statements and speculations of facts either without Appendix or other citation or else with citation that merely mystifies as to what facts, if any, the author of the petition may have had in mind, and it makes bold statements of law utterly without citation. Were this Petition the product of a jail-house lawyer in a *forma pauperis* case asserting the violation of constitutional rights the Court might well be tempted to overlook such matters, at least to the point of trying to determine whether there exist grievances, however imperfectly adumbrated.

The Court cannot fail to perceive that this petition, even though authorized by order of the district court, is a continuation of the treatment which the court of appeals expressly reproved.

This petition presents no meritorious issue but has further delayed funds essential to committee counsel's effective protection of stockholder rights. This case is now nearly fourteen years old; it has been carried without compensation for committee or counsel during all that time. Still undetermined are major issues crucial to the stockholders' protection and mandated by this Court. If committee and counsel are squeezed out, there will be no effective stockholder representation.

CONCLUSION

The decision below is correct and raises no issues worthy of the attention of this Court. The Petition for writ of certiorari should be denied.

Respectfully submitted,

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